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S U B M I S S I O N

to

THE ONTARIO COMMITTEE ON TAXATION

Lancelot J. Smith,F.C.A., Chairman

Eric Hardy

Dr. R. Craig McIvor,F.R.S.C.

Carl A. Pollock

R. Bredin Stapells, Q.C.

on behalf of

THE INTER-CHURCH COMMITTEE ON LEGAL AFFAIRS

BLAKE, CASSELS & GRAYDON

THE ONTARIO COMMITTEE ON TAXATION

WRITTEN SUBMISSION

Submission: No. 44
Date Received: December 16, 1963.

Submitter: THE INTER-CHURCH COMMITTEE ON LEGAL AFFAIRS

Summary of Submission:

1. The brief gives a general reasoning for placing Churches in a favoured position for taxation purposes.

2. The exemption from municipal real property taxes for religious organizations should be maintained and extended.

3. The deduction of charitable and religious donations for income tax purposes should be raised, but only if Ontario decided to collect its own tax.

4. Purchases and sales by Churches and religious organizations should be exempt from retail sales tax.

5. The territorial limitation concerning bequests to religious or charitable organizations should be removed.

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by

HONOURABLE DONALD M. FLEMING, P.C., Q.C.,
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I N D E X

		Pages
I.	INTRODUCTION.	1,2
II.	THE CASE IN GENERAL FOR EXEMPTION IN FAVOUR OF CHURCHES AND RELIGIOUS ORGANIZATIONS.	3-8
III.	MUNICIPAL TAXATION:	
	1. The Present Legislative Position.	9,10
	2. Legislative History of Exemptions.	11-14
	3. Scope of Exemption.	15-28
	4. The Exemption in Other Provinces.	29-34
	5. Submission.	35,36
IV.	PROVINCIAL TAXATION:	
	(A) Income Tax -	
	1. History.	37
	2. The Position in Other Provinces and Comparable Jurisdictions.	37,38
	3. The Present Legislative Position.	38,39
	4. Submission.	39,40
	(B) Retail Sales Tax -	
	1. History.	41
	2. The Present Legislative Position.	41,42
	3. The Position in Other Provinces and Comparable Jurisdictions.	42-44
	4. Submission.	44,45

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Page

(C) Succession Duty -

1. The Present Legislative Position. 46-48

2. History of Exemptions. 48-54

3. The Position in Other Provinces and Comparable Jurisdictions. 54-57

4. Submission. 57,58

V. CONCLUSION. 59

VI. APPENDIX. (i) to (xxxxvi)

I. INTRODUCTION

1. INTRODUCTION

I. INTRODUCTION

The Inter-Church Committee on Legal Affairs is composed of representatives from the following churches:

The Anglican Church of Canada
The Baptist Convention of Ontario and Quebec
The Jewish Synagogues of Canada
The Presbyterian Church in Canada
The Roman Catholic Church
The Salvation Army, and
The United Church of Canada.

Members of this Committee are appointed by the respective churches, each of which appoints a clergyman, a lay representative and a lawyer. The Committee has been in existence for approximately twenty years. The work of the Committee consists of examining legislation, both federal and provincial, and municipal by-laws, to determine whether the interests of the Churches are affected. Matters relating to taxation and property rights are thus its main concern. Representations are made to the appropriate authorities in proper cases.

The Committee meets from time to time as matters of a legal nature within its ambit arise. It derives its authority from the fact that its members are appointed by the respective churches, and it speaks on behalf of the above Churches.

This brief is presented to the Ontario Committee on Taxation following the request made by the Secretary of the Committee in July of this year to The Inter-Church Committee. The brief

has been duly approved by all members of the Inter-Church Committee and accordingly represents the views of all its constituent bodies.

II. THE CASE IN GENERAL FOR EXEMPTION IN FAVOUR OF CHURCHES AND RELIGIOUS ORGANIZATIONS

II. THE CASE IN GENERAL FOR EXEMPTION IN FAVOUR OF CHURCHES AND RELIGIOUS ORGANIZATIONS.

It is submitted that all existing exemptions enjoyed by churches and religious organizations from provincial and municipal taxation should be maintained unimpaired; some should be broadened and enlarged.

The reasons which in the past led to the creation of such exemptions by the Legislature are just as valid and just as strong today as ever they were. Indeed, they are stronger. They are sound in principle. The gravest concern would be aroused if any attempt were made to remove or modify them. It would have a most disturbing effect.

The grounds for affirming and maintaining the exemptions are many and probably too obvious to require repetition. The following may, however, be briefly set forth:-

1. The purpose of our churches, synagogues and religious institutions is spiritual, not commercial or competitive.
2. It is not the policy of the law to impose the burden and handicap of taxation on organizations which do not make or seek to make profit or gain, but rather are engaged in the spiritual and moral uplift of the community.
3. The church is the mother of all charity. It has been so throughout its history, and remains so today.
4. It has always been the policy of the law to recognize "the advancement of religion" as an

object of charity in the legal sense. Under the famous Statute of Elizabeth passed at Westminster nearly 400 years ago, charity in its legal sense comprises four principal divisions:-

the relief of poverty;
the advancement of education;
the advancement of religion; and
other purposes beneficial to the community.

The work of the churches and religious organizations is charitable in each of these four declared statutory senses.

5. The churches and religious organizations are the most effective agency of benefit to the community, province, nation and world.
6. They have contributed more to civilization than any other institution in existence.
7. They are engaged in welfare and social work, in the broad sense, of the highest importance to the welfare of the community. It is not the policy of the law to impose the burden and handicap of taxation on organizations engaged in social work which do not make or seek to make profit or gain. On the contrary, governments subsidize and support work in this field, and in many cases are actually engaged in it.
8. The churches are engaged in educational work. It is not the policy of the law to impose the burden and handicap of taxation on educational institutions which are not operated for profit or gain.

9. The work and service of the churches and religious organizations in their preventive aspect are of the highest value, both moral and material, to the community.

10. Curtailment of services rendered by the churches to the province and all communities would certainly cast added burdens on their governments, thus adding to their expenses and loss. The services are indispensable, and when provided by the Province or the municipalities, as they must then be, will be less efficiently operated under governmental auspices and will be much more costly. This is recognized now in the numerous cases in which homes for the aged, hostels and such institutions are operated by the churches at the request of municipal governments.

11. The churches and religious institutions are strained to the limit of their material resources now. The addition of any tax burden will simply result in a curtailment of their operations. This is an absolute fact for churches in the inner city areas of our larger municipalities where property values are high and the resulting taxation would eliminate the churches' witness and work when it is most needed. Already these churches are dependent for their existence upon support from outside their own areas. Any further tax collected by the Province or Municipalities from churches and religious institutions will be at the expense of the needy recipients of help from the churches and religious organizations.

12. Members of the churches, clerical and lay, pay full provincial and municipal taxes like anyone else.

13. The church is not a taxing body. It is en-

tirely dependent on voluntary gifts.

14. It is the policy of the law to grant exemption to the donors of such gifts. It defeats the purpose of the law if the gifts are taxed in the hands of the donee.

15. The churches are a channel through which their members voluntarily contribute to the uplift, welfare and aid of persons in need thereof.

16. The churches do not make use of many of the public services provided by the provincial and municipal governments.

17. There is no middle course open between exemption and taxation. No rationale exists for any other course than the maintenance of the exemptions or abolition thereof, and this latter course is unthinkable.

18. The exemptions in favour of the churches and religious organizations are at least as fully justified and as well-established as others which are recognized and created by the existing law.

19. Any departure from the existing system of exemptions will place Ontario quite out of line with the practice of other comparable jurisdictions.

20. No serious public opinion exists in support of a reduction in the existing exemptions in favour of churches and religious organizations.

"Tax exemptions in favour of non-profit religious

activities are a common and historically sanctioned feature of American law."[1] . . . . .

"Court opinions supporting tax exemption frequently mention that the legislature relieves privately owned property and activities of a non-profit character from taxation because they serve public welfare purposes for which public funds would otherwise have to be spent. This is a quid pro quo theory. Because services of a public-purpose type, including educational and charitable activities, are rendered by churches, the state grants tax exemptions in recognition of the value of these services and the tax savings that accrue because the state need not provide them. A further argument in support of state tax exemptions for church property and property used for religious purposes is that they are given in consideration of, and in order to encourage, the public benefits resulting from religion's promotion of morality, good citizenship, law and order. The following statement from an opinion of the United States Court of Appeals for the District of Columbia is typical:

> 'Congress in granting tax exemption under this statute, like most of the states, was giving expression to a broad legislative purpose to grant support to elements in the

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[1]Kauper, "The Wall Between Church and State", University of Chicago Press, 1963, page 95. (Paul G. Kauper is Professor of Law, University of Michigan.)

community regarded as good for the community.'

"Moreover, many feel that exempting churches from taxation relieves them of all governmental burdens, thus achieving the full and complete separation of church and state and implementing the church's total freedom of worship."[2] . . . . . .

"Churches and religious organizations engage in some enterprises that parallel those supported directly by government, such as education, hospitalization, and the relief of the poor. These in a broad sense may be called welfare enterprises. Since government itself supports programs of this kind and since they are recognized to serve public needs even when carried on by private agencies, tax exemptions for the private agencies seem appropriate on the ground, often stated by state courts, that the performance of these functions by private agencies saves the state the expense of providing these services. Indeed, educational and welfare enterprises conducted by churches can readily be brought under the familiar statutory exemptions for educational and charitable purposes."[3]

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[2]Kauper, page 97

[3]Kauper, pages 112, 113

III. MUNICIPAL TAXATION

III. MUNICIPAL TAXATION

1. THE PRESENT LEGISLATIVE POSITION

The principal provision of the Ontario law relating to exemption of church property from municipal taxation is contained in s. 4(3) of THE ASSESSMENT ACT, R.S.O. 1960, C. 23, which expressly exempts:-

> "Every place of worship and land used in connection therewith and every churchyard, cemetery or burying ground.
>
> (a) Where land is acquired for the purpose of a cemetery or burying ground but is not immediately required for such purpose, it is not entitled to exemption from taxation under this paragraph until it has been enclosed and actually and bona fide required, used and occupied for the interment of the dead. R.S.O. 1950, C. 24, s. 4, pars. 1-3[4]
>
> (b) The exemption from taxation under this paragraph does not apply to lands rented or leased to a church or religious organization by any person other than another church or religious organization. 1960, c. 3, s. 1(1)."

This legislation dates from 1850, although it has been amended from time to time.[5]

The exemption provided by S. 4 applies to

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[4]For the full text of these provisions relating to exemptions see Appendix pages (i) to (viii).

[5]For the Legislative History see pages 11 to 14.

general rates. It does not extend to local improvement rates. S. 8 of The Assessment Act provides as follows:-

> "The exemptions provided for by S. 4 are subject to the provisions of The Local Improvement Act as to the assessment for local improvements of land that would otherwise be exempt from such assessment under that section."[6]

Originally the exemption accorded to places of worship and church yards exempted them not only from general taxes but from local improvement taxes as well. The exemption from local improvement rates was withdrawn in 1890.[7]

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[6] As to what work may be undertaken by a Municipal Council as a local improvement see S. 2(1) of The Local Improvement Act, R.S.O. 1960, c. 223. For text see Appendix, pages (ix) to (xi).

[7] See Appendix, page (viii).

2. LEGISLATIVE HISTORY OF EXEMPTIONS.

The Assessment Act.[8]

Exemption of church property from municipal taxation can, of course, be traced to the clergy reserves created by The Constitutional Act of 1791. Legislation in Upper Canada can be traced to 1807, beginning with the statute 47 Geo. III, C. 7. It was carried forward four years later (1811) in 51 George III, C. 8, s. 2, which provided:

> "Provided also that nothing herein contained shall extend or be construed to extend, to any property, goods, or effects, matters or things herein mentioned or enumerated, which shall belong to or be in the actual possession or occupation of His Majesty, His Heirs or Successors, except the Crown and Clergy Reserves actually leased to individuals, which shall be liable to the same rates and assessments as other lands hereinbefore mentioned."

Thus it was provided that lands, even though set aside as clergy reserves, were to lose their exemption from taxation if leased to individuals.

This provision was repeated in a later enactment (1819) 59 George III, C. 7, s. 2. This statute, however, was repealed in 1850 by 13-14 Victoria, C. 66 to make way for new legislation.

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[8]The history of the legislative provisions respecting parsonages and salaries or stipends of clergymen is not included, as not being relevant to this submission.

The Assessment Act passed in the same Session (1850) 13-14 Victoria, C. 67 contains the direct progenitor of s. 4(3) of The Assessment Act of today. S. 5(2) of the Act of 1867 reads as follows:-

> "V. And be it enacted, that the following property shall be exempt from taxation:
>
> .... Secondly - Every place of worship, every churchyard or burying ground....."

This statute of Canada applied only to Upper Canada as did its successor, (1853) 16 Vict. c. 182, s. 6(2). The statute appears in R.S.U.C. 1859, c. 55, s. 9(3). There was another re-enactment in (1868-9) 32 Vict. c. 36, s. 9(3), and words were added to make it read,

> "(3) Every place of worship, and land used in connection therewith, churchyard or burying ground."

This section was carried on into R.S.O. 1877, c. 180, s. 6(3), and thence into R.S.O. 1887, c. 193, s. 7(3).

The exemption was first removed as regards local improvement taxes by (1890) 53 Vict., c. 55, s. 1, which reads,

> "1. Land on which a place of worship is erected, and land used in connection with a place of worship, shall be liable to be assessed in the same way and to the same extent as other land, for local improvements hereafter

made or to be made."

In the consolidated Assessment Act of 1892, 55 Vict., c. 48, s. 7(3), section 1 of the 1890 Act, and section 7(3) of the 1887 consolidation were combined in the same section (s. 7(3)). This consolidated version was re-enacted as R.S.O. 1897, c. 224, s. 7(3).

By (1903) 3 Edw. VII, c. 21, s. 1(2), the part dealing with local improvement was taken out of s. 7(3) of the consolidated act, and substantially re-enacted by s. 5 of the same act. The effect was to make the local improvement provision apply to all the exemptions not merely the one dealing with places of worship, etc. The local improvement provision has continued as a separate section ever since appearing as:

Stat. Ont. (1904) 4 Edw. VII, c. 23, s. 6.
(amended by (1908) 8 Edw. VII, c. 50, s.2, a correctional amendment only).
R.S.O. 1914, c. 195, s. 6.
R.S.O. 1927, c. 238, s. 5.
R.S.O. 1937, c. 272, s. 6.
R.S.O. 1950, c. 24, s. 5.
R.S.O. 1960, c. 23, s. 8.

In R.S.O. 1914, c. 195, s. 5(2), the word "cemetery" was added so that what appeared in (1904) Edw. VII, c. 23, s. 5(2) was changed to read,

"s. 5(2) Every place of worship and land used in connection therewith and every churchyard, cemetery or burying ground"

There was an addition to this enacted by Stat. Ont., 1919, c. 50, s. 1, reading as follows:

> "Where land is acquired for the purpose of a cemetery or burying ground but is not immediately required for such purpose it shall not be entitled to exemption from taxation under this paragraph until it has been enclosed and actually and bona fide required, used and occupied for the interment of the dead."

This addition has been continued in our statutes along with the basic section by

R.S.O. 1927, c. 238, s. 4(2)
R.S.O. 1937, c. 272, s. 4(2)
R.S.O. 1950, c. 24, s. 4(3)
R.S.O. 1960, c. 23, s. 4(3)

The section which now appears as R.S.O. 1960, c. 23, s. 4(5) first appeared in (1910) 10 Edw. VII, c. 88, s. 1(2). This section has been continued by

R.S.O. 1914, c. 195, s. 5(4)
R.S.O. 1927, c. 238, s. 4(4)
R.S.O. 1937, c. 272, s. 4(4)
R.S.O. 1950, c. 24, s. 4(5)
R.S.O. 1960, c. 23, s. 4(5)

What appears in R.S.O. 1960, c. 23, s. 4(3)(b) was first enacted by Stat. Ont. 1960, c. 3, s. 1(1).

3. SCOPE OF EXEMPTION - IN GENERAL

Under s. 4(3) of The Ontario Assessment Act[9] exemption from municipal general taxes is strictly confined to

1. a place of worship;
2. land used in connection with a place of worship;
3. a church yard; and
4. a cemetery or burying ground that is actually and bona fide required, used and occupied for the interment of the dead.[10]

The exemption was withdrawn in 1960 in the case of lands rented or leased by a church or religious organization to any person other than a church or religious organization.[11]

This provision virtually signifies that to be entitled to exemption a building and/or land must be owned by a church or religious organization, set apart for the purpose of worship, and used for that purpose.

This exemption, which has been in existence for over a century, like all exemptions in

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[9]For text see Appendix, page (i).

[10]The observations in this brief concern the first three subjects. The fourth, namely cemeteries and burying grounds, lies outside the ambit of this brief, but the Inter-Church Committee supports the maintenance of their exemption from municipal taxation.

[11]ss. (b). The Inter-Church Committee does not ask for exemption where lands owned by churches and religious organizations are rented or leased to others for non-religious purposes.

taxing statutes, has been given a very restricted application by the courts of this Province.[12]

The exemption applies only to general rates. It does not extend to local improvement rates.[13]

As a result of the strict interpretation placed upon the exemption some very artificial and patently discriminatory consequences have ensued. A few examples are indicative:-

1. In any church building devoted to worship there is necessarily some accommodation not strictly, directly, and exclusively used for the purposes of worship, but only as generally appurtenant thereto. An obvious example would be the furnace room in a church. As related to worship it is at most only appurtenant, and then for only part of the year.
2. If the minister, priest or rabbi has his office and place of study in the church building they will be exempt from taxation as appurtenant to the place of worship, but if he uses a room in the parsonage or manse for the purpose of study, giving religious instruction, planning the services of worship and preparing his sermons, then that accommodation is taxed.
3. If a congregation acquires two houses adjoining its church property and uses one of them as a

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[12] See: re Melville Presbyterian Church Manse (1926) 31 O.W.N. 187;
Commissioners v. Pemsel (1891) A.C. 531;
Les Soeurs de la Visitation v. Ottawa (1952) O.R. 61, affirmed (1952) O.W.N. 280;
St. Mary's Anglican Church v. Windsor (1942) O.W.N. 102; and
re Grafton Homes (1963) 2 O.R., 540.

[13] The Assessment Act, s. 8. (See Appendix, page (viii).

place of meeting to accommodate various church organizations or groups or as overflow accommodation for the Sunday School, it will be exempt from taxation, but if it turns the other house into a parsonage or manse it will be taxed, even though the minister might open some of its rooms on Sunday to accommodate an overflow from the Sunday School.

4. Increasingly the larger congregations require a church office. If it is located in the church building it is treated as a part of the place of worship and is exempt; but if it is located away from the church building and the church yard, then, even if owned by the church, it is denied exemption.

These examples illustrate the very artificial line which s. 4(3) as strictly construed and applied has drawn between exempt and taxable church property.

A. Centralized Administrative Offices.

A problem of increasing acuteness relates to what might be called central offices or head offices of the churches. These were unknown over a century ago when the legislation was first enacted. Over the years all the large denominations have been obliged to establish central offices or head offices for administrative and other purposes. Examples of such activities are church planning, church extension, church community work, health programmes, education and other work beneficial to the community and a necessary part of the overall function of the churches. Many of the activities which they carry on are of a nature requiring some measure of control and direction from a central authority. The establishment of central administrative offices not only makes for greater efficiency, but results in substantial savings in the cost of administration.

Most of the central administrative offices must be located in large centres, and in fact most of them have been located in the City of Toronto. If the building contains a chapel the latter portion is exempt, but otherwise the building is in fact heavily taxed.

The expansion of the churches must at least match that of the country and this Province. They must constantly devise new methods and new techniques to meet new problems. As the churches expand and their work becomes more complex, the headquarters organization must inevitably grow and

with it both the burden and the discriminatory nature of the taxation now borne by them. It would today be quite impossible to carry on the work of the churches without such office accommodation. It is just as appurtenant to the function of worship in a broad, but realistic sense, as the office located in the church building which is recognized as a place of worship.

The present statutory provision is narrow, artificial, discriminatory, and out of date. The same sound reasons which led the Legislature to enact the present exemption in the days before central or head offices became indispensable to the work of the churches, and before the work of the churches became so complex and diversified, apply today in favour of exemption of office space occupied by churches for their centralized administrative purposes.

Such an exemption would not cast onerous burdens on the municipalities. The administrative offices of most of the churches are located in the City of Toronto, and would not appreciably burden the municipality. According to figures furnished by the Assessment Commissioner of Metropolitan Toronto, and based on the 1962 assessment, the total assessment of exempt church property for 1,017 congregations, including both land and buildings, is $57,233,591.00. The total taxable property of administrative offices is $1,409,152.00.

The Commissioner has supplied the following figures in detail:-

Churches Exempt from Taxation in
Metropolitan Toronto
1962 Assessment

Number of Churches		Land	Buildings	Total
181	United Churches	$3,540,807	$11,007,238	$14,548,045
147	Anglican	3,464,575	7,599,301	11,063,876
129	Roman Catholic	1,951,557	7,529,398	9,480,955
109	Baptist	974,502	3,269,962	4,244,464
81	Presbyterian	1,041,798	3,609,145	4,650,943
30	Salvation Army	320,507	1,208,180	1,528,687
66	Synagogues	466,965	3,744,704	4,211,669
274	Miscellaneous	1,933,996	5,570,956	7,504,952
1,017		$13,694,707	$43,538,884	$57,233,591

Churches' Administrative Offices - Taxable in Metropolitan Toronto 1962 Assessment

		Land	Building	Total Taxable	Exempt
Anglican Church House	600 Jarvis	$105,000	$377,000	$480,916	$ 1,084
Anglican Diocese of the Arctic	153 St. Clair W.	1,025	3,210	4,235	
Anglican Information Centre	11 Trinity Sq.	2,660	3,270	5,930	
Baptist Committee of Canada	299 Queen W.	10,500		10,500	
Catholic Chancery	55 Gould	11,300	47,000	58,300	
Catholic Extension Society	53-55 Dundas St. E.	4,991	11,794	16,785	
Salvation Army National Headquarters	20 Albert	187,500	548,900	177,288	559,112
Salvation Army Waiby	471 Jarvis	54,600	65,500	120,100	
UnitedChurch House	85 St.Clair E.	126,200	609,000	528,073	207,127
United Church Literature Distribution Centre	299 Queen St.W.	3,875	3,150	7,025	
		$507,651	$1,668,824	$1,409,152	$767,323

B. Social Work.

The present law also far antedates the entry of the churches into various fields of what has come to be called "welfare" or "social work". With the growing complexity of life, the heavy shift of population from rural areas to urban centres, the concentration of population in the largest cities, the post-war influx of immigrants, most of them settling in large urban centres, the problems arising out of decay in housing, and other developments, all taking a toll of family life and social habits and sanctions, the churches have been obliged to undertake social work and welfare service enterprises which are of the highest value in their communities. This work must often be carried on outside places of worship and away from them. The churches have naturally gone to the places where the need exists and especially where it is most acute. In so doing they have moved out their activities from their tax-exempt properties to properties on which they are taxed. Social work is not construed as "worship" within the meaning of s. 4(3), and property used exclusively for social work does not qualify for exemption as a "place of worship".

S. 5 of The Assessment Act, enacted in 1952,[14] empowers municipal councils to pass by-laws exempting from taxes (other than school taxes and local improvement rates) lands of any religious institution named in the by-law provided that the land is owned by the institution and occupied and used solely for recreational purposes, on such con-

[14] 1952, C. 3, s. 2 (See Appendix, page viii for text.)

ditions as may be set forth in the by-law. This clause at best is only permissive. Unlike s. 4(3) it creates no exemption. It is, moreover, confined to the use of land for recreational purposes. Much social work could not qualify as recreational in its nature. Some new legislation is, therefore, required to exempt property used by churches and religious organizations for charitable and social purposes.

C. Discrimination as Compared with Other Organizations.

S. 4 discriminates against churches and religious organizations as compared with certain other most estimable organizations. Whereas the exemption of the former is confined for this purpose to places of worship and land used in connection therewith, no such limitation is attached to the exemption created in favour of other worthy, but no more worthy, organizations.

1. Under an amendment passed by the Legislative Assembly in 1946 and amended in 1950, and now found in ss. 10,[15] property owned, occupied and used solely and only by the Boy Scouts Association or the Canadian GirlGuides Association or by any provincial or local association or other group in Ontario that is a member of either association or is otherwise chartered or officially recognized by it is exempt. The church exemption is confined to places of worship; the exemption accorded to the Boy Scouts Association, the Canadian Girl Guides

[15] See Appendix, page iv for text.

Association, and their provincial and local associations and groups is subject to no such limitation. It applies to all property owned, occupied and used solely and only by them. The churches and religious organizations can claim to be no less deserving of exemption in respect of property owned, occupied and used solely and only by them.

2. Similarly, under an amendment passed by the Legislature in 1946 and now found in ss. 12,[16] land of an incorporated charitable institution organized for the relief of the poor, the Canadian Red Cross Society, St. John Ambulance Association, or any similar incorporated institution, conducted on philanthropic principles, and not for the purpose of profit or gain, that is supported, in part at least, by public funds, is exempt when the land is owned by the institution and occupied and used for the purposes of the institution. Again, while the exemption accorded to church property is limited in this respect to places of worship and land used in connection therewith, the exemption accorded to the very worthy organizations enumerated in ss. 12 is under no such limitations. The churches and religious organizations are surely no less deserving of exemption in respect of property "owned by the

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[16] See Appendix, page (v) for text.

institution and occupied and used for the purposes of the institution."

The churches and religious organizations meet all the requirements of such "similar incorporated institutions" under ss. 12 except that they are not supported by public funds. Thus they are penalized and discriminated against because they are not a charge on public funds. Church homes for the aged, for example are taxed and are incurring deficits.[17(a)] They are penalized by the imposition of taxes because they are not themselves a charge on public funds. This is a double discrimination. The same is true of church welfare agencies.

3. Under an amendment passed by the Legislative Assembly in 1955 as part of a special Act concerning the City of Toronto,[17] the Municipal Council of Toronto is authorized to pass by-laws exempting from municipal taxes, other than local improvement charges, lands in Toronto owned by the United Jewish Welfare Fund of Toronto on Beverley Street, "as long as such property is occupied and used by the United Jewish Welfare Fund of Toronto, or by some organization or institution conducted on philanthropic principles and not for the purposes of profit or gain under the direction of the United Jewish Welfare Fund of Toronto." The exemption accorded to churches and religious

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[17(a)] re Grafton Homes (1963) 2 O.R., 540;

[17] 1955, C. 117, s. 1. See Appendix page (xi) for text.

organizations is restricted to places of worship. Churches and religious organizations are surely entitled, in respect of property owned, occupied and used by them for their work, to tax treatment no less favourable than that accorded under this special legislation to a very worthy organization.

The church is historically and in fact the mother of all charity. It is also, directly or indirectly, the mother of all existing charitable institutions. Yet under the law governing municipal taxation in this province the offspring are given much more favoured treatment than the parent.

The Inter-Church Committee on Legal Affairs does not contest, or begrudge, the wide exemption extended by s. 4 to the other organizations named above. On the contrary, it supports the broad terms of the exemption extended to them. The Committee submits, however, that the same treatment and the same broader exemption should be extended to churches and other religious organizations.

4. Under ss. 7 of s. 4 of The Assessment Act every public hospital receiving aid under The Public Hospitals Act with the land attached thereto is exempt, but not land of a hospital which is occupied by any person as tenant or lessee. Church hospitals as such, however, are not exempt. They can become exempt only if they become public hospitals receiving aid under The Public

Hospitals Act.[18] There are actually two church hospitals in Northern Ontario and one in London, Ontario, which are taxed accordingly.

D. Other Discriminations in Section 4.

The restricted nature of the exemption extended to property owned, occupied and used by churches and other organizations also contrasts with the broader exemptions extended by s. 4 to other cases.

Under ss. 7[19] land owned and used by a public hospital for farming purposes and attached to the hospital is exempt even though it is separated from the hospital by a highway.

Under ss. 11[20] property owned by an industrial farm and occupied and used for the purposes of the institution is exempt.

Under ss. 13 property owned by The Children's Aid Society (whether held in the name of the Society or in the name of a trustee or otherwise) if used exclusively for the purposes and in connection with the Society is exempt.

Under ss. 14[21] the property of every public library, every public literary society, every public scientific institution, every agricultural society or association, every horticultural society or association,to the extent to which it is actually occupied for the purposes of the institution

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[18] S. 4(7) of The Assessment Act. See Appendix page (iii).
[19] See Appendix, page (iii) for text.
[20] See Appendix, page (v) for text.
[21] See Appendix, page (vi) for text.

or society, is exempt. If the same broad exemption were extended to churches and other religious organizations, property owned and occupied by them and used for their purposes would be exempt.

4. THE EXEMPTION IN OTHER PROVINCES AND COMPARABLE JURISDICTIONS.

A. The Other Provinces.

Exemption from municipal general rates (but not local improvement taxes) is general throughout all Canadian provinces, though the form and extent vary.

Quebec exempts church property, including presbyteries, parsonages, archbishops' and bishops' palaces.[22]

Manitoba exempts churches and buildings erected for Sunday School purposes owned and occupied, maintained and used, primarily by a religious denomination for the purpose of public worship and the contiguous land used in connection therewith, not exceeding two acres, but not other buildings, not being churches or Sunday Schools, erected on church property. It also authorizes a municipality by by-law to exempt the buildings and contiguous lands used for religious, educational, charitable and recreational purposes to the extent of two acres.[23]

Saskatchewan exempts every place of public worship and the land used in connection therewith not exceeding three acres, of which a religious organiza-

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[22] The Tax Exemption Act, R.S.Q. 1941, C. 221, s. 9-12. See Appendix, page (xii).

[23] The Municipal Act, R.S.M. 1954, C. 173, s. 984. See Appendix, page (xiii) to (xv).

tion is the owner, except such part as may have any other building thereon and except such portion as is used for purposes other than public worship.[24]

Alberta exempts land held by or for the use of any religious body and on which is situated a building chiefly used for divine service, public worship or religious education if, when situated in a town or village the lands do not exceed one-half acre, or such greater area not in excess of four acres if authorized by municipal by-law and, when situated in any other municipality, the land does not exceed three acres. The exemption also includes the building chiefly used for divine service, public worship, or religious education, but not any other building thereon or any part of the exempt building which is used for purposes other than divine service, public worship, or religious education.[25]

British Columbia exempts every building set apart and in use for the public worship of God and any church hall which the council considers is necessary thereto, and the land upon which the building or hall actually stands, and also such area of the lands surrounding the building or hall as may be determined by the municipal council.[26]

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[24]Local Improvement Districts Act, R.S.S. 1953, C. 141, s. 34, as amended by 1962 C. 51, s. 3. See Appendix, page (xv) .

[25]The Assessment Act (Alta) 1960, C. 5, s. 14. See Appendix, page (xv) and (xvi).

[26]The Municipal Act, R.S.B.C. 1960, C. 255, s. 327. See Appendix, page(xvii)

New Brunswick exempts both the buildings with their sites and the personal property of religious organizations used exclusively for religious, philanthropic or educational work of the organizations, but not property from which the organizations receive rent.[27]

Nova Scotia exempts every church and place of worship and the land used in connection therewith and every church hall used for religious or congregational purposes exclusively save only for occasions specially authorized by church authorities and for which no revenue in excess of $100.00 per annum is received.[28]

Prince Edward Island exempts all churches, chapels, or places of public worship actually used by any religious body or society for the purpose of divine worship and all buildings used as permanent educational establishments and the lands and premises immediately connected with all such edifices sufficient to carry the same, and to provide reasonable grounds and surroundings therefor; provided that the municipality may by by-law remove any of these exemptions.[29]

Newfoundland exempts all lands and buildings used for religious purposes.[30]

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[27]The Municipal Tax Act N.B., 1955, C. 14, s. 25, See Appendix, page (xvii) and (xviii)

[28]The Assessment Act, R.S.N.S., C. 15, s. 3(b). See Appendix, page (xviii)

[29]The Town Act P.E.I. 1951, C. 162, s. 104(1). See Appendix, page (xvii) and (xix).

[30]The Local Government Act, (Newfoundland), 1961, C. 55, s. 83. See Appendix, page (xix).

It will thus be seen that the legislative position of the exemption in British Columbia, Alberta and Saskatchewan is in general similar to that in Ontario. The legislation in Manitoba and Nova Scotia is similar, but extends the exemption farther than in Ontario. Quebec, New Brunswick, Prince Edward Island and Newfoundland go considerably farther than Ontario in extending exemption to church property.

The State of New York exempts from municipal taxation real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tract, charitable, benevolent, missionary . . . . purposes and used exclusively for carrying out thereupon one or more of such purposes, either by the owning corporation or association or by another such. If only a portion of such real property is used for the purposes aforesaid, that portion only is exempt.

It further exempts real property owned by a corporation organized for the purposes of establishing an interdenominational centre to assist in the work of and to promote co-operation among various religious denominations and to acquire or erect a building or buildings for such centre and to lease a portion or portions thereof for the use of religious, educational, missionary and charitable organizations.

It goes even farther in exempting real property held by any officer of a religious denomination, real property owned by a minister, priest or

rabbi, or his widow, to the extent of $1,500.00, and property owned by a religious corporation while actually used by the officiating clergyman thereof for residential purposes.[31]

The State of Michigan exempts from municipal taxation all houses of public worship with the land on which they stand, the furniture therein and all rights in the pews, and also any parsonage owned by any religious society of the State of Michigan and occupied as such.[32]

Thus these two States of the American Union being the States which are geographically closest to Ontario, go farther than does Ontario in exempting from municipal taxation the property of churches and other religious organizations. Other States also go farther than does Ontario in this regard.

"Tax exemptions in favour of non-profit religious activities are a common and historically sanctioned feature of American law. The exemption from property tax of property used for a house of worship or for religious purposes is universal in our states, whether pursuant to express constitutional

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[31]New York Laws 1958, C. 959, s. 420,430,436,460 and 462. See Appendix pages (xix) to (xxi).

[32]The General Property Tax Act, Michigan, 1948, C. 211, and Public Acts 1961, C. 238. See Appendix page (xxii) for text.

grant or authorization or by reason of legislation without express authorization. Most states extend the exemption to the land on which the church is located; and others to the value of the parsonage and adjacent parking lots."[33]

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[33]Kauper, op. cit., page 95.

5. SUBMISSION.

Religion is more than worship. The work and service of the churches and religious institutions extend far beyond the limits of services of public worship, important as these are and will ever be.

The role of the churches and religious institutions has become much more complex and much more diversified in modern times than ever before in this country, particularly in our urban centres. Their work and service in the welfare, charitable, social work and educational fields is of the highest importance and value in Ontario communities. This change and growth have not yet been recognized in the legislation. They should be.

The problem of municipal taxes on churches and religious organizations becomes more acute and the burden of taxation becomes constantly heavier as lands and buildings which the churches must use for their central administrative purposes and their social, welfare, educational and charitable work become more extensive, assessments mount and tax rates constantly increase. The burden resting on the churches is much heavier than was the case even a few years ago.

The churches and religious organizations should be accorded the same tax treatment as other organizations which enjoy a wider form of exemption under s. 4 (pages 21 to 26 above). On this basis churches and religious organizations should be accorded exemption from municipal taxation in respect of all lands and buildings owned and occupied

by them and used solely and exclusively in the work of such churches and religious organizations.

If, however, the churches and religious organizations are to be denied equality with the other organizations mentioned in s. 4, then at least the provisions of ss. 3 should be rationalized, broadened, and rid of artificial and discriminatory applications by adding to the list of exemptions the following:-

> "land and buildings owned, used and occupied by any church or religious organization for any of its administrative, charitable, welfare, educational, or social service purposes."

IV. PROVINCIAL TAXATION

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(A) INCOME TAX

1. History.

Prior to April 1, 1962 only one province, (Quebec) imposed an income tax on individuals and corporations and one province (Ontario) imposed an income tax on corporations. As from April 1, 1962 all provinces now impose their own income tax on individuals and corporations. The Federal Government under agreement collects the tax on behalf of any province which desires it to do so, provided that in the provincial legislation for the purpose the same tax base is adopted as Parliament has enacted in The Income Tax Act (Canada). All provinces except Quebec have entered into such agreements. Quebec collects its own taxes on individuals and corporations; Ontario collects its own taxes on corporations only.

2. Position in Other Provinces and Comparable Jurisdictions.

The Ontario Income Tax Act[35] in adopting the Federal tax base has specifically adopted its exemptions and deductions. The legislation of the

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[35] The Ontario Income Tax Act, 1961-62, C. 60, s. 5. See Appendix, page (xxii) for text.

other provinces has done likewise.[36]

While the amounts of the exemptions in Quebec are higher than under the Federal legislation, the provisions in relation to exemptions so far as churches and religious organizations are concerned, are precisely similar.

In the United States "federal income tax law permits deductions for contributions for religious as well as educational and charitable purposes, and organizations serving these purposes are exempt from income taxation."[37]

3. The Present Legislative Position.

It is, therefore, to the Federal legislation that we must turn for the law in regard to the exemptions available to churches and religious organizations under the Ontario income tax.

S. 62(1)(e) of The Income Tax Act (Canada)[38] exempts the income of every charitable organization, whether or not incorporated, all the resources of which were devoted to charitable activities carried on by the organization itself, and no part of the income of which was payable to or was otherwise available for the personal benefit of any proprietor, member or shareholder thereof. Under this provision the churches and religious organizations are exempted from the Federal and

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[36] See Appendix, pages (xxii) to (xxvii)

[37] Kauper, op. cit., page 96.

[38] R.S.C. 1952, C. 148.

Ontario income tax.

S. 26(1)(a)(iv) of the Federal Act provides an exemption of $2,000.00 per annum for an unmarried minister or clergyman in charge of a diocese, parish or congregation who maintained a self-contained domestic establishment and employed therein a full-time servant.

S. 5(1)(vi) of the Federal legislation exempts reasonable allowances received by a minister or clergyman in charge of or ministering to a diocese, parish or congregation, for expenses for transportation incident to the discharge of the duties of his office or employment.

S. 27(1)(a) provides that any taxpayer may, in computing his income for a taxation year, deduct his donations to charitable organizations in Canada (as defined by s. 62(1)(e) supra) not exceeding 10% of his income.

All of these provisions of the Federal law have been made applicable to the Ontario income tax under the provisions of The Ontario Income Tax Act.

4. Submission.

As long as Ontario chooses to allow its income tax to be collected by the Federal authority, it must maintain the same tax base as that under the Federal legislation. No change can be made in the deductions available to churches and religious organizations accordingly as long as the present agreement prevails.

Representations have been made from time to time for enlargement of the portion of income (now 10%) which may be deducted by taxpayers in respect of their charitable donations. Ontario, however, is not in a position to accede to such representations so far as the Ontario income tax is concerned until Parliament amends the Federal legislation in that respect.

If Ontario should in the future choose to collect its own income tax and to terminate the subsisting agreement with the Federal Government, the Ontario Legislature would then be in a position to alter the provisions of the Ontario law in relation to the exemptions available to churches and religious organizations. If that should happen this submission would request that consideration be given to enlarging the percentage of income which may be devoted by the taxpayers to charitable donations.

(B) RETAIL SALES TAX

1. History.

The taxing powers of the provinces are confined to the imposition of direct taxes. Consequently the only sales tax which they are competent to impose is one at the retail level, where the purchasing consumer can not pass it on to someone else.

Ontario introduced a retail sales tax in 1961.[39]

2. The Present Legislative Position.

The tax applies generally to sales in Ontario with defined exceptions. The purchaser of religious and educational publications as defined by the Provincial Treasurer is exempt.[40]

The Lieutenant-Governor-in-Council is authorized to make regulations providing for the rebate of the tax in whole or in part to the governing body of any religious, charitable or benevolent organization in respect of tangible personal property entering into capital investment by such organization.[41] "Capital investment" is defined by the regulations as meaning "the result of any construction project that, when complete, is real property."

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[39] Ontario Statutes 1960-61, C. 91, as amended by 1961-62, C. 126. See Appendix pages (xxvii) and (xxviii).

[40] S. 5(59)

[41] S. 39(2)(e)(i)

The Lieutenant-Governor-in-Council may also provide by regulation for relaxing the strictness of the Act relevant to the incidence and the collection of tax under which in special cases where, without relaxation, inconvenience or hardship might result, including cases involving the purchase of tangible personal property at bazaars and rummage sales.[42]

The regulations further provide that the Treasurer may pay to the governing body of a religious, charitable or benevolent organization . . . in respect of tangible personal property that enters into and becomes part of the construction on land of a building or structure of such organization an amount calculated at the rate of 1.25 per cent of the total contract price.

3. The Position in Other Provinces and Comparable Jurisdictions.

All provinces in Canada except Manitoba and Alberta impose a retail sales tax. All other seven levying provinces extend certain exemptions to churches and religious organizations in respect of this tax similar to those in Ontario.

Quebec exempts sales made to a "fabrique" or the trustees of a parish for the purposes of their

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[42] S. 39(2)(f).

work and sales made by them.[43] Sales of all printed books and periodicals are likewise exempt.[44]

Saskatchewan exempts sales of Bibles, Testaments, prayer books, and hymn books.[45]

British Columbia likewise exempts Bibles, Testaments, prayer books and hymn books.[46]

New Brunswick exempts the sales of books which are printed and bound and which are solely for educational, technical, cultural or literary purposes.[47]

The legislation authorizes the Lieutenant-Governor-in-Council to make regulations providing for the rebate of the tax in whole or in part to the Crown in favour of religious, charitable or benevolent organizations with respect to the purchase of goods entering into capital investment by such organizations.[48] It further authorizes the Lieutenant-Governor-in-Council to make regulations providing for relaxing the strictness of the Act in relation to the incidence or collection of the tax in cases where great inconvenience or hardship

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[43] The Sales Tax Act, R.S.Q. 1941, C. 88, s. 12(p).

[44] Quebec Statutes 1944, C. 20, s. 1(c).

[45] The Education and Hospitalization Tax, R.S.S. 1953, C. 61, s. 6.

[46] The Social Services Tax, R.S.B.C. 1960, C. 361, s. 5, as amended by 1962 Statutes, C. 57, s. 4.

[47] The Social Services and Education Tax Act, R.S.N.B., 1952, C. 213, s. 10(y).

[48] S. 49(2)(d).

might otherwise result, including cases involving the purchase of goods at church sales or bazaars and rummage sales, and involving the purchase of goods entering into capital investment by religious, charitable or benevolent organizations.[49]

Nova Scotia authorizes the Lieutenant-Governor-in-Council to make regulations providing for the rebate of the tax in whole or in part to religious, charitable or benevolent organizations in respect of goods purchased by such organizations which enter into capital investment.[50]

Prince Edward Island confers on the Lieutenant-Governor-in-Council power by regulation to the same effect as the New Brunswick legislation, but names no specific exemptions.[51]

Newfoundland's new legislation is similar.[52]

4. Submission.

The Ontario tax has been in effect for only two years. The tax authorities are still

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[49]S. 49(2)(f).

[50]The Hospital Tax Act, Statutes of Nova Scotia, 1958, C. 4, s. 40(2) as amended by 1960, C. 53, s. 3.

[51]The Revenue Tax Act, P.E.I. Statutes, 1960, C. 36, s. 50(2)(e) and (g).

[52]Social Security Assessment Act, Statutes of Newfoundland, 1963, C. 83.

dealing with administrative problems. It, therefore, appears premature to offer precise submissions in this brief, particularly as the statute confers on the Lieutenant-Governor-in-Council the power to deal with many of these matters by regulation. In general, however, the Inter-Church Committee on Legal Affairs submits that purchases and sales by churches and religious organizations should be exempt from retail sales tax.

(C) SUCCESSION DUTY

1. The Present Legislative Position.

The Ontario succession duty was first introduced in 1892 and has been in effect ever since.

The present Act[53] provides that no duty shall be levied on

(a) any disposition for religious, charitable or educational purposes to any religious organization that carries on its work solely in Canada;

(b) any property devised or bequeathed by the deceased for religious, charitable or educational purposes to any religious organization that carries on its work solely in Canada;

(c) any disposition for religious, charitable or educational purposes to any religious organization that carries on its work both in and outside Canada to the extent of that portion in value of the property in respect of which the disposition is made as is in the same ratio to the whole that its expenditures for carrying on its work in Canada bear to its total expenditures during such period as the Treasurer may determine;

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53 The Succession Duty Act, R.S.O. 1960, c. 386, s. 5(1). See Appendix pages (xxxiv) to (xxxviii).

(d) that portion of any property devised or bequeathed by the deceased for religious, charitable or educational purposes to any religious organization that carries on its work both in and outside Canada as is in the same ratio to the whole that its expenditures for carrying on its work in Canada bear to its total expenditures during such period as the Treasurer may determine;

(j) any property passing on the death of the deceased to any religious organization for religious, charitable or educational purposes carried out in any province of Canada other than Ontario which is shown to the satisfaction of the Treasurer to allow the same exemption on property given, devised or bequeathed to any religious, charitable or educational organization for religious, charitable or educational purposes carried out in Ontario.[54]

The field of succession duty is occupied by both federal and provincial authorities. The

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[54] Since 1953 a distinction is drawn between religious and educational organizations on the one hand and charitable organizations on the other. In the case of the latter, read the foregoing statement based on s. 5 as though "Ontario" were substituted for "Canada". See also s. 5(4) of the Act - Appendix, page (xxxviii).

Dominion Succession Duty Act was first introduced in 1941.[55] It was replaced in 1958 by The Estate Tax Act[56], but continues to apply to all successions where the deceased died before January 1, 1959. The Estate Tax Act governs all successions from and including the latter date.

Previously all provinces imposed succession duties. In the cases of all provinces which refrain from imposing such a tax the Federal Government offers to pay to the province 50% of the yield from the federal tax.[57]

Ontario, Quebec and British Columbia are imposing and collecting their own succession duty; the other seven provinces have repealed or suspended their succession duty legislation and are sharing the yield from the federal taxes.

2. History of Exemption from Ontario Succession Duty.

The Act was first passed in 1892.[58] It provided the following exemptions:-

"3. This Act shall not apply:-

(2) To property given, devised or bequeathed for religious, charitable or educational purposes;

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[55]Statutes of Canada, 1940-41, C. 14.

[56]Statutes of Canada, 1958, C. 29.

[57]Federal-Provincial Fiscal Arrangements Act, 1960-61, C. 58.

[58]55 Vict. C. 6.

This section was repealed in 1905[59] and replaced by a new section reading as follows:-

"3. No duty shall be leviable:

(2) On property devised or bequeathed for religious, charitable or educational purposes to be carried on by a corporation or person domiciled within the Province of Ontario."

This section was again amended in 1907[60] by changing the word "domiciled" to "resident" and adding

"or on the amount of any unpaid subscription for any like purpose made by any person in his lifetime to any corporation or person mentioned in this subsection for which his estate is liable."[61]

This section was repealed in 1931[62] and the following was substituted:

"(e) On property given, devised or bequeathed to a religious, charitable or educational organization, for religious, charitable or educational pur-

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[59] 5 Edw. VII, C. 6, s. 6(2)

[60] 7 Edw. VII, C. 10, s. 5(2)

[61] The section appears in this form in 1909, Edw. VII, C. 12, s. 6(2); R.S.O. 1914, C. 24, s. 6(b); Stat. Ont. 1914, C. 10, s. 2; R.S.O 1927, C. 26, s. 6(b);

[62] Stat. Ont. 1931, C. 7, s. 5.

poses to be carried out in Ontario."

In 1933[63] the following was added:-

"provided that where the organization carries on its work both in and out of Ontario the exemption from duty shall be allowed only upon such portion of the gift, devise or bequest as in the same ratio to the whole that the ratio of expenditures of the organization for carrying on its work in Ontario bears to its total expenditures."[64]

In the statute amendment of 1937, this section was repealed and two new sections were enacted to enlarge the exemptions.[65]

"4.a(d) a disposition of any property by the deceased, in his lifetime, and any property devised or bequeathed by him to or in favour of a religious, charitable or educational organization for religious, charitable or educational purposes, when such organization carries on its work solely within Ontario;"

"4.b when a religious, charitable or educational organization carries on its work both within and outside Ontario

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[63]Stat. Ont. 1933, C. 61, s. 4.

[64]This provision was re-enacted by Stat. Ont. 1934, C. 55, s. 4(f).

[65]Stat. Ont. 1937, C. 3, s. 6.

> and there is a disposition of any property by the deceased in his lifetime or any property is devised or bequeathed by him to such organization, notwithstanding anything in this Act contained, the portion of such property as is in the same ratio to the whole that the ratio of the expenditures of the organization for carrying on its work in Ontario bears to its total expenditures, during such period as the Treasurer may determine, shall not be included for the purpose of arriving at the aggregate value and duty shall not be payable with respect to such portion."[66]

When The Succession Duty Act of 1939 was passed, both these sections were repealed. In their place appeared sections which correspond with some of those now in force. The present sections 5(1)(a), (b), (c), and (d), and 5(2) were first enacted in 1939.[67]

The section now appearing as s. 5(j) was first enacted in 1941.[68]

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[66] These sections appear in this form in the statute consolidation of 1937, R.S.O. 1937, C. 26, s. 5(1) and s. 6.

[67] By Stat. Ont. 1939 (2nd Sess.) C. 1, s. 4(1) (a) (b)(c)(d) and s. 4(2), and continued in R.S.O. 1950, C. 378, s. 4(1)(a)(b)(c)(d) and s. 4(2). Certain limits on the amount so deductible under ss. (b) and (d) were imposed by the 1939 Act, but were removed by Stat. Ont. 1942, C. 34, s. 36.

[68] By Stat. Ont. 1941, C. 55, s. 37(1), and continued in R.S.O. 1950, C. 378, s. 4(1)(k).

The section now appearing as s. 5(3) was first enacted in 1949.[69]

The section now appearing as s. 5(4) was first enacted in 1953.[70]

Summary

Thus from 1892 to 1905 the exemption extended to any disposition of property for religious, charitable or educational purposes without any geographical limitation on those purposes whatever. The geographical limitation was first introduced in 1905, and it confined the exemption to property devised or bequeathed for religious, charitable or educational purposes to be carried on by a corporation or person domiciled (in 1907 changed to resident) within the Province of Ontario. In 1931 the limitation was revised to confine the exemption to the religious, charitable or educational purposes to those to be carried out in Ontario.

In 1933 what might be called a pro-rating principle was introduced where the religious, charitable or educational organization carried on its work both in and out of Ontario the exemption was applied to a portion fixed in terms of the ratio which the expenditures of the organization for carrying on its work in Ontario bore to its total expenditures.

[69]By Stat. Ont. 1949, C. 98, s. 1, and continued in R.S.O. 1950, C. 378, s. 4(3), and amended in 1952 by C. 102, s. 1.

[70]By Stat. Ont. 1953, C. 100, s. 1.

In 1941 what might be called the inter-provincial reciprocity principle was introduced. Ontario exempts property passing to any religious, charitable or educational organization for religious, charitable or educational purposes carried out in any province in Canada other than Ontario where that province extends the same exemption to gifts for similar purposes carried out in Ontario. This provision is still in effect.

Finally, in 1949 the geographical limitation as applied to religious organizations was extended from Ontario to include all of Canada.[71] The same extension was accorded in 1952 to educational organizations.[72] The provincial limitation continues to apply to charitable organizations.

In 1953 the section was amended to provide that where a charitable organization makes any payment for religious or educational purposes to any religious or educational organization that carries on its work solely in Canada, it shall not merely by reason of making such payment be deemed to carry on its work outside Ontario and such payment shall not be deemed to be an expenditure for carrying on its work.[73]

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[71] 1949, C. 98, s. 1.

[72] 1952, C. 102, s. 1.

[73] 1953, C. 100, s. 1.

Thus after the original exemption from 1892 to 1905 without any territorial limitation whatever, the territorial limitation introduced in 1905 has been steadily modified and enlarged until now in the case of religious organizations the admissible boundary is no longer provincial, but national.

3. The Position in Other Provinces and Comparable Jurisdictions.

Quebec exempts legacies, gifts and subscriptions for religious, charitable or educational purposes without any territorial limitations.[74]

The new legislation in British Columbia contains territorial limitations resembling certain of the Ontario provisions. The religious, charitable or educational purposes must be carried out in the Province. It applies also the pro-rating principle where the organization carries on its work both in and outside the Province. It also exempts property given, devised or bequeathed for religious, charitable or educational purposes to a religious, charitable or educational organization approved by regulations made under the Act.[75]

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[74]The Succession Duty Act, Quebec, 1943, C. 18, s. 13, amended 1949, C. 32, s. 2. (Appendix, page (xxxx).

[75]The Succession Duty Act, R.S.B.C. 1960, C. 372, amended 1963, C. 44, s. 5. (Appendix, page (xxxxi).

FEDERAL

The Dominion Succession Duty Act exempts property passing to a charitable organization in Canada operated exclusively as such and not for the benefit of any person, member or shareholder thereof.[76]

The Estate Tax Act[77] exempts the value of a gift, absolute and indefeasible made by the deceased either in his lifetime or by his will, to any organization in Canada that, at the date of the making of the gift and of the death of the deceased, was an organization constituted exclusively for charitable purposes, all or substantially all of the resources of which, if any, were devoted to charitable activities carried on or to be carried on by it, or to the making of gifts to other such organizations in Canada, all

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[76] R.S.C. 1952, C. 317, s. 7(1)(d) exempted property "where the successor is a charitable organization in Canada operated exclusively and not for the benefit, gain or profit of any person, member or shareholder thereof." This provision was repealed in 1957 and s. 7(a) was added to the Act in the following terms: "In determining the aggregate net value and dutiable value, respectively, there shall be deducted the value of any property included in a succession to a charitable organization in Canada operated exclusively as such and not for the benefit, gain or profit of any person, member or shareholder thereof, and no duty shall be levied under this Act upon or in respect of that succession."

[77] 1958, C. 29, amended 1962-63, C. 5, s. 2(1)

or substantially all of the resources of which were so devoted, and no part of the resources of which was payable to or otherwise available for the benefit of any proprietor, member or shareholder thereof.[78]

When first enacted in 1958[79] the exemption applied to dispositions in favour of any organization in Canada that, at the time of the making of the gift, was a charitable organization operated exclusively as such and not for the benefit, gain or profit of the proprietor, member or shareholder thereof.

In administration a broad interpretation has been given to the words "or substantially all". moreover, under the Canada-U.S. Estate Tax Convention, 1961,[80] reciprocity in relation to exempt gifts has been extended by the two countries to each other.

In the United States "the federal estate- and gift-tax laws permit deductions for gifts for religious, educational and charitable purposes; state inheritance-tax laws specify similar deductions."[81]

The Estate Tax of the State of New York rejects all territorial limitations, and exempts bequests, legacies, devises or transfers (1) to any

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[78] S. 7(1)(d) as amended 1960, C. 29, s. 4(1), and by 1962-63, C. 5, s. 2(1).

[79] 1958, C. 29, s. 7(1)(d).

[80] Statutes of Canada, 1961, C. 9. See Article IV(1) of the Convention.

[81] Paul G. Kauper, "The Wall Between Church and State", page 96.

corporation, wheresoever incorporated or located, organized and operated exclusively for religious, charitable . . . . purposes, no part of the earnings of which enures to the benefit of any stock-holder or individual, or (2) to a trustee . . . . to be used . . . . exclusively for religious, charitable . . . . purposes.[82]

Michigan applies the exemption to transfers for benevolent, charitable, religious or educational purposes to be carried out in Michigan or in any other State of the Union which reciprocally extends such recognition to such purposes when carried out in the State of Michigan.[83]

4. Submission.

It is submitted that the time has come to abolish the remaining vestiges of the territorial limitation on the religious purposes to which the gift, devise or bequest to a religious or charitable organization may be applied.

In taking this step Ontario would

(a) restore the original breadth of the exemption which prevailed from 1892 to 1905;

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[82]McKinney's Consolidated Laws of New York Annotated 1960, Book 59, Part 2 and Supplement of 1963, s. 249(s). (Appendix, page (xxxxiii)).

[83]Inheritance Tax Public Acts, Michigan, 1962, C. 168, s. 7. (Appendix, page (xxxxiv).

(b) continue and complete the widening of the territory within which the religious, charitable and educational purposes may be carried out which has been enacted by successive stages since the first limitation was introduced in 1905;

(c) bring the Ontario legislation into accord with the breadth of the exemption prevailing in some other jurisdictions;

(d) remove a limitation which is very difficult of application; and

(e) meet a problem realistically.

This country and this Province in earlier years received assistance from abroad through religious, charitable and educational organizations. In many respects they still do. Surely the time has come to recognize that true charity knows no bounds, that Canadians who desire to benefit religious and charitable work and missionary undertakings carried on by Canadian churches and religious organizations in other countries should not be penalized for doing so, and that as Canadians have received in the past so they should be permitted now to give without incurring tax penalties.

It is therefore submitted that the present legislation should be amended by exempting any gift or disposition by a deceased person, whether during his lifetime or by his will to any religious organization in Canada for religious purposes regardless of where such purposes are carried out.

V. CONCLUSION

V. CONCLUSION

The Inter-Church Committee on Legal Affairs respectfully tenders the foregoing submission to the Ontario Committee on Taxation with respect to both provincial and municipal taxes. It urges the Committee to recommend the continuation of all existing exemptions in favour of churches and religious organizations and also to recommend the enlargement of the exemptions as hereinabove set forth in detail.

The Inter-Church Committee on Legal Affairs will be pleased, if the Ontario Committee on Taxation wishes it to do so, to appear before the Committee by Counsel, and to discuss or enlarge upon the written submissions herein contained.

ALL OF WHICH IS RESPECTFULLY SUBMITTED to the Ontario Committee on Taxation on behalf of The Inter-Church Committee on Legal Affairs by

Hon. Donald M. Fleming, P.C., Q.C.,
Counsel for The Inter-Church
Committee on Legal Affairs.

VI. APPENDIX

TEXT OF STATUTORY PROVISIONS REFERRED TO IN BRIEF

(A) MUNICIPAL TAXATION

1. Ontario.

The Assessment Act, R.S.O. 1960, C. 23.

Secs. 4, 5, 8.

4. All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:

1. Lands or property belonging to Canada or any Province.

2. Property held in trust for a tribe or body of Indians, but not if occupied by a person who is not a member of a tribe or body of Indians.

3. Every place of worship and land used in connection therewith and every churchyard, cemetery or burying ground.

(a) Where land is acquired for the purpose of a cemetery or burying ground but is not immediately required for such purpose, it is not entitled to exemption from taxation under this paragraph until it has been enclosed and actually and bona fide required, used and occupied for the interment of the dead.

(ii)

(b) The exemption from taxation under this paragraph does not apply to lands rented or leased to a church or religious organization by any person other than another church or religious organization.

4. The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a university, high school, public or separate school, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, but not if otherwise occupied.

(a) The exemption from taxation under this paragraph does not apply to lands rented or leased to an educational institution mentioned in this paragraph by any person other than another such institution.

5. The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a seminary of learning maintained for philanthropic or religious purposes, the whole profits from which are devoted

or applied to such purposes, but such grounds and buildings are exempt only while actually used and occupied by such seminary.

6. The buildings and grounds not exceeding in the whole fifty acres of and attached to or otherwise bona fide used in connection with and for the purposes of a seminary of learning maintained for educational purposes, the whole profits from which are devoted or applied to such purposes, but such grounds and buildings are exempt only while actually used and occupied by such seminary, and such exemption does not extend to include any part of the lands of such a seminary that are used for farming or agricultural pursuits and are worked on shares with any other person, or if the annual or other crops, or any part thereof, from such lands are sold.

7. Every public hospital receiving aid under The Public Hospitals Act with the land attached thereto, but not land of a public hospital when occupied by any person as tenant or lessee.

   (a) Land owned and used by such a public hospital for farming purposes shall be deemed at-

tached to the hospital within the meaning of this paragraph, notwithstanding that it is separated therefrom by a highway.

8. Every highway, lane or other public communication and every public square, but not when occupied by a tenant or lessee other than a public commission.

9. Subject to section 43 and except as otherwise provided in this or any other Act, the property belonging to any county or municipality or vested in or controlled by any public commission or local board as defined by The Department of Municipal Affairs Act, including a municipal parking authority, wherever situate and whether occupied for the purposes thereof or unoccupied but not when occupied by a tenant or lessee.

10. Property owned, occupied and used solely and only by The Boy Scouts Association or The Canadian Girl Guides Association or by any provincial or local association or other local group in Ontario that is a member of either Association or is otherwise chartered or officially recognized by it.

11. Every industrial farm, house of industry, house of refuge, institution for the reformation of offenders or for the care of children, boys' and girls' home, or other similar institution conducted on philanthropic principles and not for the purpose of profit or gain, but only when the land is owned by the institution and occupied and used for the purposes of the institution.

12. Land of an incorporated charitable institution organized for the relief of the poor, The Canadian Red Cross Society, St. John Ambulance Association, or any similar incorporated institution conducted on philanthropic principles and not for the purpose of profit or gain, that is supported, in part at least, by public funds, but only when the land is owned by the institution and occupied and used for the purposes of the institution.

13. The property of a children's aid society discharging the functions of a children's aid society under The Child Welfare Act, whether held in the name of the society or in the name of a trustee or otherwise, if used exclusively for the purposes of

and in connection with the society.

14. The property of every public library and other public institution, literary or scientific, and of every agricultural or horticultural society or association, to the extent of the actual occupation of such property for the purposes of the institution or society.

(a) For the purposes of this paragraph, an agricultural society under The Agricultural Societies Act shall be deemed to be in actual occupation where the property of the society is rented and the rent is applied solely for the purposes of the society.

15. Land acquired by a society or association by reason of its being the site of any battle fought in any war, and maintained, preserved and kept open to the public in order to promote the spirit of patriotism.

16. The land of every company formed for the erection of exhibition buildings to the extent to which the council of the municipality in which such land is situate consents that it shall be exempt.

17. All machinery and equipment used for manufacturing or farming pur-

poses, including the foundations on which they rest, but not including machinery and equipment to the extent that it is used, intended or required for lighting, heating or other building purposes or for producing power for sale, or machinery owned, operated or used by a transportation system or by a person having the right, authority or permission to construct, maintain or operate within Ontario in, under, above, on or through any highway, lane or other public communication, public place or public water, any structure or other thing, for the purposes of a bridge or transportation system, or for the purpose of conducting steam, heat, water, gas, oil, electricity or any property, substance or product capable of transportation, transmission or conveyance for the supply of water, light, heat, power or other service.

18. One acre used for forestry purposes for every ten acres of the farm in one municipality under a single ownership but not more than twenty acres in all, and, where the total acreage consists of more than one separately assessed parcel, the

assessor shall treat all such parcels as one parcel for the purpose of determining the exemptions under this paragraph and shall apportion the exemption to each parcel in the ratio of the acreage of each parcel used or partly used for forestry purposes to the total acreage of all parcels used or partly used for forestry purposes.

s.5. The council of any local municipality may pass by-laws exempting from taxes, other than school taxes and local improvement rates, the land of any religious institution named in the by-law provided that the land is owned by the institution and occupied and used solely for recreational purposes, on such conditions as may be set out in the by-law.

s.8. The exemptions provided for by section 4 are subject to the provisions of The Local Improvement Act as to the assessment for local improvements of land that would otherwise be exempt from such assessment under that section.

THE LOCAL IMPROVEMENT ACT, R.S.O. 1960, C. 223, s. 2.

2(1) A work of any of the characters or descriptions hereinafter mentioned may be undertaken by the council of a corporation as local improvement:

(a) opening, widening, extending, grading, altering the grade of, diverting or improving a street;

(b) opening or establishing a new street;

(c) constructing a bridge as part of a street;

(d) constructing, enlarging or extending a sewer, including a sewer on each side or on one side only of a street;

(e) constructing, enlarging or extending a watermain, including a main on each side or on one side only of a street;

(f) paving a street;

(g) constructing a curbing, gutter or sidewalk in, upon or along a street;

(h) constructing or maintaining a boulevard where a part of the street has been set apart for the purposes of a boulevard;

(i) sodding any part of and planting, maintaining and caring for trees, shrubs and plants upon and in a street;

(j) the extension of a system of water,

gas, light, heat or power works owned by the corporation, including all such works as may be necessary for supplying water, gas, light, including street lighting, heat or power, to the owners of land, for whose benefit the extension is provided;

(k) in a township where works have been constructed and erected for the supply of electrical power to owners, for constructing and erecting in connection with such works such further works, plant, appliances and equipment as may be necessary for street lighting;

(l) acquiring, establishing, laying out and improving a park or square not having a greater area than two acres, or a public drive;

(m) constructing retaining walls, dykes, breakwaters, groynes, cribs and other shore protection works along the banks of rivers, streams or creeks or along the shores of lakes;

(n) constructing and erecting on petition only, on any street or part of a street, equipment, plant and works for the purpose of supplying electric light or power, in-

cluding standards and underground conduits and wires, to the extent to which the cost of the same exceeds the cost of the equipment, plant and works that would otherwise be provided at the expense of the corporation at large;

(o) constructing a roadway or subway under a railway or other roadway;

(p) subject to section 25, for resurfacing with asphalt or other suitable material a pavement having a foundation that in the opinion of the engineer is sufficient therefor, whether or not the lifetime of the pavement has expired, and, when any work undertaken under this clause is such as might entitle it to a provincial grant, the approval of the Department of Highways shall be first obtained with respect to the suitability of the foundation;

(q) widening a pavement on a street;

(r) constructing a retaining wall with or without a sidewalk or pavement on a street.

An Act Respecting the City of Toronto, 1955 C. 117, s. 1 (Ontario).

1. The Council of the Corporation may pass by-laws exempting from municipal taxes, other than local improvement charges, such part of the land, as defined in The Assessment Act, at 145 and at 150-152 Beverley Street in the City of Toronto, as is owned by the United Jewish Welfare Fund of Toronto, so long as such part is occupied and used by the

United Jewish Welfare Fund of Toronto or by some organization or institution conducted on philanthropic principles and not for the purpose of profit or gain, under the direction of the United Jewish Welfare Fund of Toronto.

2. Quebec.

The Tax Exemption Act, R.S.Q. 1941, C. 221, Secs. 9, 10, 11, 12.

9. In every municipality governed by a special act, the following immovables shall be exempt from taxation and subject to the provisions respecting the property of fabriques and of religious institutions and corporations contained in the special act governing the municipality where such immovables are situated to wit: the archbishops' and bishops' palaces, including the land on which they are built, and the presbyteries and parsonages, including the land on which they are built, occupied for residential purposes by the priest or the minister in charge of any church or of any edifice used for public worship, whether the presbytery or parsonage be the property of the fabrique or of the religious institution or corporation, the owner of the church or of the edifice used for public worship, or whether it be occupied by the priest or minister as a tenant, provided that only one presbytery,

parsonage or residence for each church or edifice used for public worship shall benefit from the exemption granted by this division.

10. The residence of a priest or minister which is not the property of the fabrique or of the religious institution or corporation, the owner of the church or of the edifice used for public worship, shall, however, be exempt from real estate tax on an assessed value of fifteen thousand dollars only.

11. Notwithstanding the provisions of section 9, no exemption shall be granted when such residence of the priest or minister in charge of any church is situated outside the municipality where the church served by such priest or minister is situated.

12. This division shall apply to school municipalities governed by a special act, and, in each one of such municipalities, the immovables mentioned in section 9 shall be property exempt from taxation under the provisions of the said section.

3. Manitoba.

The Municipal Act, R.S.M. 1954, C. 173, Sec. 984 (1)(3)(4).

(1) All lands shall be liable to taxation by a municipality subject to the following exemptions:

(i) If authorized by a by-law of the municipality, the buildings and con-

tiguous lands used for religious, educational, charitable and recreational purposes to the extent of two acres, whether vested in a trustee or otherwise. (Stat. Man. 1958, c. 41, s. 17).

(k) Churches and buildings erected for Sunday School purposes owned and occupied, maintained and used, primarily by a religious denomination for the purpose of public worship and the contiguous land used in connection therewith, not exceeding two acres, but this exemption is not applicable to, and does not include, any other buildings, not being churches or Sunday Schools, erected on church property.

(m) Land, not exceeding twenty acres, used for a public burying ground or cemetery by the municipality or a church, religious denomination, or religious society. (Stat. Man. 1960, c. 44, s. 17).

(3) The lands mentioned in any of the clauses of subsection (1) except Crown lands and Indian lands shall be liable to special assessments for local improvements in the manner provided in Part VIII. (Stat. Man. 1956, c. 46, s. 31).

(4) The lands mentioned in any of the clauses of subsection (1) except Crown lands,

Indian lands, municipal lands, and lands used for school, church, hospital or Sunday School purposes, shall be liable to assessment and taxation for school purposes.

4. Saskatchewan.

The Local Improvement Districts Act, R.S.S. 1953, C. 141, as amended by 1962, C. 51, sec. 3.

34. In every district the property exempt from taxation shall be:

5. every place of public worship and the land used in connection therewith not exceeding three acres, of which a religious organization is the owner, except such part as may have any other building thereon; provided that if any portion of a place of public worship is used for purposes other than public worship such portion and the land used in connection therewith shall be subject to taxation;

7. every cemetery, other than a cemetery to which Part II of The Cemeteries Act, 1955, applies.

5. Alberta.

The Assessment Act, 1960, C. 5, Sec. 14.

14. The following property is exempt from assessment by a municipality, namely:

(c) a parcel of land held by or for the use of any religious body and on which is situated a building chiefly used for divine service, public worship or religious education, if

(i) when situated in a town or village, the land does not exceed one-half acre or such greater area not in excess of four acres as may be exempted by by-law from assessment and taxation, and

(ii) when situated in any other municipality the land does not exceed three acres,

together with the building chiefly used for divine service, public worship or religious education, but exclusive of any other building thereon and exclusive of any part of the building chiefly used for divine service, public worship or religious education that is used chiefly for other purposes.

(f) land in use as a public cemetery not exceeding twenty-five acres, together with any building or structure on the land and used for burial purposes but exclusive of any other building or structure on the land.

6. British Columbia.

The Municipal Act, R.S.B.C., C. 255, as amended 1961, C. 43, sec. 14(a).

s. 327 (1) Except as otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:-

(g) every cemetery within the meaning of the Cemeteries Act in actual use solely for such purpose other than a cemetery owned or operated by a company that is or has been subject to the Cemetery Companies Act. (Stat. B.C. 1961, c. 43, s. 14(a))

(h) Every building set apart and in use for the public worship of God and any church hall which the Council considers is necessary thereto, and the land upon which the building or hall actually stands, and also such area of the lands surrounding the building or hall as may be determined by the Council.

7. New Brunswick.

The Municipal Tax Act, 1955, C. 14, Sec. 25(1)(g),(h).

(g) cemeteries and burying grounds;

(h) both the buildings with their sites and the personal property of religious

organizations used exclusively for religious, philanthropic or educational work of the organization, but not property for which the organization receives any rent.

8. Nova Scotia.

The AssessmentAct, R.S.N.S., C. 15, Sec. 3(b)

3. The following property shall be exempted from taxation under the provisions of this Act:

(b) every church and place of worship, and the land used in connection therewith, and every churchyard and burial ground and every church hall used for religious or congregational purposes exclusively save only for occasions specially authorized by church authorities and for which no revenue in excess of one hundred dollars per annum is received;

9. Prince Edward Island.

The Town Act, 1951, C. 162, Sec. 104(1)

104. (1) All churches and chapels or places of public worship actually used by any religious body or society for the purpose of divine worship and all buildings used as permanent educational establishments and the lands and premises immediately connected with all such edifices sufficient to carry the same and proper out-buildings and to

provide reasonable grounds and surroundings therefor, shall be exempt from ordinary taxation hereunder but not from assessment for special sidewalk or street improvements or the like; provided that the town may by by-law remove any of the exemptions granted by this sub-section.

10. Newfoundland.

The Local Government Act, 1961, C. 55, Sec. 83(d).

83. The following property is not subject to the real property tax:

(d) lands and buildings used for religious purposes.

11. New York.

Laws of New York, 1958, C. 959, Secs. 420, 430, 436, 460, 462 (as extracted).

S. 420

1. Real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tract, charitable, benevolent, missionary . . . purposes . . . and used exclusively for carrying out thereupon one or more of such purposes, either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this

section. . . . .

2. If any portion of such real property is not so used exclusively to carry out thereupon one or more of such purposes but is leased or otherwise used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be exempt . . . .

S. 430 Real property owned by a corporation organized for the purposes of establishing an interdenominational center to assist in the work of and to promote co-operation among various religious denominations and to acquire or erect a building or buildings for such center and to lease a portion or portions thereof for the use of religious, educational, missionary and charitable organizations shall be exempt from taxation . . . to the same extent and subject to the same conditions and exceptions as property of a corporation organized exclusively for religious, educational, missionary or charitable purposes.

S. 436 Real property held by any officer of a religious denomination shall be entitled to the same exemption from taxation, special ad valorem levies,

and special assessments, subject to the same conditions and exceptions, as property owned by a religious corporation.

S. 460 Real property owned by a minister of the gospel, priest or rabbi of any denomination, an actual resident and inhabitant of this state, who is engaged in the work assigned to him by the church or denomination of which he is a member, or who is unable to perform such work due to impaired health or is over seventy years of age, and real property owned by his unremarried widow while she is an actual resident and inhabitant of this state, shall be exempt from taxation to the extent of fifteen hundred dollars.

S. 462 In addition to the exemption provided in section four hundred twenty of this chapter, property owned by a religious corporation, while actually used by the officiating clergyman thereof for residential purposes, shall be exempt from taxation.

12. Michigan.

The General Property Tax Act, 1948, C. 211, re-enacted by Public Acts 1961, C. 238.

Sec. 7. The following property shall be exempt from taxation:

Fifth. All houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and also any parsonage owned by any religious society of this state and occupied as such;

Sixth. All lands used exclusively as burial grounds, and the rights of burial therein; and the tombs and monuments therein, while reserved and in use for the purpose: Provided that the stock of any corporation owning such burial grounds shall not be exempt.

B. INCOME TAX.

1. Ontario.

The Income Tax Act (Ontario), 1961-62, C. 60, as amended 1962-63, C.61, Sec. 5.

5. No tax is payable under this Act by any person for a period when that person was exempt from tax by virtue of subsection 1 of section 62 of the Federal Act, and any definitions or descriptions in the Federal Act applying to any such person apply mutatis mutandis for the purposes of this Act unless otherwise provided.

2. Canada.

The Income Tax Act, R.S.C. 1952, C. 148,

<u>as amended in each year. Secs. 5(1)(vi), 26 (1)(a)(iv); 27(1)(a); 62(1)(e)(f)(g).</u>

5(1) Income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year plus

(b) all amounts received by him in the year as an allowance for personal or living expenses or as an allowance for any other purpose except

(vi) reasonable allowance received by a minister or clergyman in charge of or ministering to a diocese, parish or congregation for expenses for transportation incident to the discharge of the duties of his office or employment.

26 (1) For the purpose of computing the taxable income of an individual for a taxation year, there may be deducted from his income for the year such of the following amounts as are applicable:

(a) $2,000. in the case of a taxpayer who, during the year, was

(iv) an unmarried minister or clergyman in charge of a diocese, parish or congregation who maintained a self-contained domestic establishment and employed therein a fulltime servant;

27(2) Where an individual was, during the taxation year, a member of a religious order and had, as such, taken a vow of perpetual poverty, he may, in lieu of the deduction permitted by paragraph (a) of subsection (1) deduct from his income for the year an amount equal to his earned income for the year as defined by section 32 if, of his income, that amount has been paid to the order.

62(1) No tax is payable under this Part upon the taxable income of a person for a period when that person was

(e) a charitable organization, whether or not incorporated, all the resources of which were devoted to charitable activities carried on by the organization itself and no part of the income of which was payable to or was otherwise available for the personal benefit of any proprietor, member or shareholder thereof;

(f) a corporation that was constituted exclusively for charitable purposes no part of whose income was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof, that has not, since June 1, 1950, acquired control of any other corporation and that, during the period,

(i) did not carry on any business,

(ii) had no debts incurred since June 1, 1950, other than obligations arising in respect of salaries, rents, and other current operating expenses, and

(iii) except in the case of a corporation that

was, before the 1st day of January, 1940, constituted exclusively for charitable purposes, expended amounts each of which is

(A) an expenditure in respect of charitable activities carried on by the corporation itself,

(B) a gift to an organization in Canada the income of which for the period is exempt from tax under this Part by virtue of paragraph (e)

(C) a gift to a corporation resident in Canada the income of which for the period is exempt from tax under this Part by virtue of this paragraph, or

(D) a gift to Her Majesty in right of Canada or a province or to a Canadian municipality, and

the aggregate of which is not less than 90% of the corporation's income for the period.

(g) a trust all the property of which is held absolutely in trust exclusively for charitable purposes, that has not since June 1, 1950, acquired control of any corporation and that, during the period,

(i) did not carry on any business,

(ii) had no debts incurred since June 1, 1950, other than obligations arising in respect of salaries, rents and other current operating expenses, and

(iii) expended amounts each of which is

(A) an expenditure in respect of

charitable activities carried on by the trust itself,

(B) a gift to an organization in Canada the income of which for the period is exempt from tax under this Part by virtue of paragraph (e), or

(C) a gift to a corporation resident in Canada the income of which for the period is exempt from tax under this part by virtue of paragraph (f), and

the aggregate of which is not less than 90% of the income of the trust for the period.

3. Quebec.

The Income Tax Act, 1953-54, C. 17, Sec. 6(2)(d), 13(b), 37.

6. Income for a taxation year from an office or employment is the salary, wages and any other remuneration, including gratuities, received by the taxpayer in the year, plus

(2) all amounts received by him in the year as allowances for personal or living expenses or for any other purpose except

(d) reasonable allowances received by the ordinary of a diocese, a member of the clergy or a minister of religion ministering to a diocese, parish or congregation or in charge thereof for travelling expenses incurred in discharg-

ing the duties of his office or employment;

By s. 13(b) the Lieutenant-Governor-in Council is entitled to make regulations respecting deductions. These may contain provisions favorable to clergy. By s. 31(1)(d)

> d. an unmarried minister or clergyman in charge of a diocese, parish or congregation, who maintained a self contained domestic establishment and employed therein a full time servant

obtains a basic $3,000 deduction compared with $1500 for an ordinary individual. This corresponds with s. 26(1)(d)(iv) of the Federal Act.

37. In computing the taxable income of a taxpayer for a taxation year, the following deductions may be made:

> (a) those which, on the 1st of January, 1954, were allowed for the purpose of computing federal income tax, by section 27 of the Income Tax Act (R.S.C. 1952, c. 148) except deductions in respect of business losses.

C. RETAIL SALES TAX.

1. Ontario.

The Retail Sales Tax Act, 1960-61, C. 91,

as amended 1961-62, C. 126, Secs. 5(59 and 39(2)(e)(i) and (f).

5. The purchaser of the following classes of tangible personal property is exempt from the tax imposed by this Act:

59. Religious and educational publications, as defined by the treasurer.

39. (2) Without limiting the generality of subsection 1, the Lieutenant Governor in Council may make regulations,

(e) providing for the rebate of the tax in whole or in part to

(i) the governing body of any religious, charitable or benevolent organization in respect of tangible personal property entering into capital investment by such organization.

(f) providing for relaxing the strictness of this Act relative to the incidence or collection of tax hereunder in special circumstances where, without relaxation, inconvenience or hardship might result, including cases involving the purchase of tangible personal property at bazaars and rummage sales.

2. Quebec.

The Sales Tax Act, R.S.Q. 1941, C. 88, as amended 1944, C. 20, sec. 1(c) and 1960-61 C. 43, sec. 2 . Secs. 12(p) and (t) and 13.

12. This act shall not apply to the following:

(p) sales made to a fabrique or the

trustees of a parish or to a cemetery society or company or to a hospital, for the purposes of their work, and sales made by them.

(t) printed books and periodicals; classroom supplies, not including automatic pencils or fountain pens.

13. Notwithstanding any law or by-law to the contrary, the exemptions provided for in the preceding section shall apply, from the first of May, 1961, to any sales tax or education tax imposed by a municipal or school corporation, substituting in paragraph t of the said section, the words "outside the territory subject to the tax" for the words "outside of the Province".

3. Saskatchewan.

The Education and Hospitalization Tax, R.S.S. 1953, C. 61, Sec. 6.

6. There are hereby specifically exempted from the provisions of this Act and from the computation of the amount of tax leviable or payable by the consumer or user in respect of the consumption or use of tangible personal property, the following classes of tangible personal property sold at retail sales in the province, that is to say,

... Bibles, testaments; prayer books; hymn books; . . .

4. British Columbia.

The Social Services Tax, R.S.B.C., 1960, C. 361, as amended 1962, C. 57, Sec. 4.

5. The following classes of tangible personal property are specifically exempted from the provisions of this Act:

(q) Bibles, testaments, prayer-books and hymn-books.

5. New Brunswick.

The Social Services and Education Tax Act, R.S.N.B. 1952, C. 213, as amended 1953, C. 25, Sec. 19(3) and 1956, C. 60, Sec. 1(d).

Secs. 10(s)(y) and 49(2)(d)(f).

10. A consumer shall not be liable to pay the tax in respect of the consumption of the following goods,

(s) school text books;

(y) books which are printed and bound, and which are solely for educational, technical, cultural or literary purposes, but not including directories, price lists, time tables, rate books, catalogues, periodic reports, fashion books, albums, magazines, periodicals, books for writing or drawing upon, or any books of the same general classes.

49.(2) Without limiting the generality of subsection (1), the Lieutenant-Governor-in-Council may make regulations,

(d) providing for the rebate of the tax in whole or in part to the Crown; religious, charitable or benevolent organizations with respect to the purchase of goods entering into capital investment by such organizations.

(f) providing for relaxing the strictness of the Act relative to the incidence or collection of the tax thereunder in cases where, without relaxation, great inconvenience or hardship might result; including cases involving the purchase of goods at church sales or bazaars, and rummage sales, and involving the purchase of goods entering into capital investment by religious, charitable or benevolent organizations.

6. Nova Scotia.

The Hospital Tax Act, 1958, C. 4, as amended 1960, C. 53, Sec. 3.

Sec. 40(2)(f).

40.(2) Without limiting the generality of the provision contained in subsection (1) the Governor in Council may make regulations:

(f) providing for the rebate of the tax in whole or in part to:

(i) religious, charitable or benevolent organizations in respect of goods purchased by such organization which enter into capital investment;

and defining the nature of such circumstances and prescribing the terms and conditions under which rebates may be made.

7. Prince Edward Island.

The Revenue Tax Act, 1960, C. 36, Sec. 50, (2)(e)(g)

50. (2) Without limiting the generality of subsection (1) the Lieutenant-Governor in Council may make regulations

(e) providing for the rebate of the tax in whole or in part to the Crown: religious, charitable or benevolent organizations with respect to the purchase of goods entering into capital invest-

ment by such organizations; and to purchasers in exceptional circumstances; and for defining the nature of such circumstances; and for the terms and conditions under which rebates may be made;

(g) providing for relaxing the strictness of the Act relative to the incidence or collection of the tax thereunder in cases where, without relaxation, great inconvenience or hardship might result; including cases involving the purchase of goods at church sales or bazaars, and rummage sales, and involving the purchase of goods entering into capital investment by religious, charitable or benevolent organizations.

8. Newfoundland.

The Social Security Assessment Act, 1963, C. 83.

There are no specific exemptions under the Act or its amendments which are of interest in this matter.

(D) SUCCESSION DUTY.

1. Ontario.

The Succession Duty Act, R.S.O. 1960, C. 386, Sec. 5.

5. (1) No duty shall be levied on any of the following property, nor on any person to whom there are any transmissions of any of the following property, with respect to such transmissions, nor on any person to whom any of the following dispositions are made, with respect to such dispositions, and such property and dispositions shall not be included in the aggregate value nor included for the purpose of determining any rate of duty,

(a) any disposition for religious, charitable or educational purposes to any religious, charitable or educational organization that carries on its work solely in Ontario;

(b) any property devised or bequeathed by the deceased for religious, charitable or educational purposes to any religious, charitable or educational organization that carries on its work solely in Ontario;

(c) any disposition for religious, charitable or educational purposes to any religious, charitable or educational organization that carries on its work both in and outside Ontario to the extent of that portion in value of the property in respect of which the disposition is made as is in the same ratio to the whole that its expenditures for carrying on its work in Ontario bear to its total expenditures during such period as the Treasurer may determine;

(d) that portion of any property devised or bequeathed by the deceased for religious, charitable or educational purposes to any religious, charitable or educational organization that carries on its work both in and outside Ontario as is in the same ratio to the whole that its expenditures for carrying on its work in Ontario bear to its total expenditures during such period as the Treasurer may determine.

(e) any property devised or bequeathed by the deceased to and any disposition to the Dominion ofCanada, the Province of Ontario, any municipality

in Ontario or any conservation authority under The Conservation Authorities Act;

(f) any disposition for necessaries or education to or for any member of the family of the deceased where it is shown to the satisfaction of the Treasurer that such member was dependent in whole or in part on the deceased for such necessaries or education;

(g) any disposition where actual and bona fide enjoyment and possession of the property in respect of which the disposition is made, was assumed more than five years before the date of death of the deceased by the person to whom the disposition is made, or by a trustee for such person, and thenceforward retained to the entire exclusion of the deceased or of any benefit to him whether voluntary or by contract or otherwise;

(h) any non-commutable annuity, income or periodic payment effected in any manner other than by will or testamentary instrument and paid for by the deceased during his lifetime, and paid to or enjoyed by the wife or dependent father or mother or any dependent brother, sister or child of

the deceased after the death of the deceased, to the extent of $1,200 per annum with respect to any one person and to the extent of $2,400 per annum in the aggregate;

(i) any property devised or bequeathed by the deceased to and any disposition to The Canadian National Institute for the Blind, TheCanadian Red Cross Society or any patriotic organization or institution in Canada that receives the written approval of the Secretary of State of Canada; and

(j) any property passing on the death of the deceased to any religious, charitable or educational organization for religious, charitable or educational purposes carried out in any province of Canada other than Ontario which is shown to the satisfaction of the Treasurer to allow the same exemption on property, given, devised or bequeathed to any religious, charitable or educational organization for religious, charitable or educational purposes carried out in Ontario.

(2) For the purposes of subsection 1, the Treasurer may in his absolute discretion determine whether any purpose or

organization is a religious, charitable or educational purpose or organization within the meaning of clause a, b, c, d, or j of subsection 1.

(3) Notwithstanding anything in this section, clauses a,b,c, and d of subsection 1 in so far as they apply to religious and educational organizations apply to such organizations as if the word "Canada" were substituted for the word "Ontario" wherever it appears in such clauses.

(4) Where a charitable organization makes any payment for religious or educational purposes to any religious or educational organization that carries on its work solely in Canada, it shall not merely by reason of making such payment be deemed to carry on its work outside Ontario and such payment shall not be deemed to be an expenditure for carrying on its work.

2. Canada.

The Dominion Succession Duty Act, R.S.C. 1952, C. 89, Sec. 7(1)(d).

7. (1) From the dutiable value of any property included in a succession the following exemptions shall be deducted and no duty shall be leviable in respect thereof:

(d) where the successor is a charitable organization in

Canada operated exclusively as such and not for the benefit, gain or profit of any person, member or shareholder thereof;

The Estate Tax Act, 1958, C. 29, as amended 1960, C. 29, Sec. 4(1) and 1962-63, C. 5, Sec. 2(1).

Sec. 7(1)(d)

7. (1) For the purpose of computing the aggregate taxable value of the property passing on the death of a person, there may be deducted from the aggregate net value of that property computed in accordance with Division B such of the following amounts as are applicable:

(d) the value of any gift made by the deceased whether during his lifetime or by his will, where such gift can be established to have been absolute, to

(i) any organization in Canada that at the time of the making of the gift, was a charitable organization operated exclusively as such and not for the benefit, gain or profit of any proprietor, member or shareholder thereof, or

(ii) Her Majesty in right of Canada or a province, a Canadian municipality or a municipal or other public

body in Canada performing a function of government,

minus such part of any estate, legacy, succession or inheritance duties or any combination of such duties (including any tax payable under this Part) as is, either by direction of or arrangement made or entered into by the deceased whether by his will or by contract or otherwise, or by any statute or law imposing such duties or relating to the administration of the estate of the deceased, payable out of the property comprised in such gift or payable by the donee as a condition of the making of such gift;

3. Quebec.

The Succession Duty Act, 1943, C. 18, as amended 1949, C. 32, Sec. 2.

Sec. 13. Subject to the provisions of section 49 b no duties shall be exigible on legacies, gifts and subscriptions for religious, charitable or educational purposes.

Such exemptions shall be apportioned in accordance with the provisions of section 8.

The proceeds of an insurance policy on the life of the deceased person, payable to a charitable or educational institution, church, "fabrique" or parish, cemetery association or company shall also be exempt from the duties imposed by this Act.

4. British Columbia.

The Succession Duty Act, R.S.B.C., 1960, C. 372, as amended 1963, C. 44, Sec. 5.

Sec. 5(1) (h)(i)(j)(k) and (2).

5. (1) This Act shall not apply, so far as liability to pay succession duty is concerned,

(h) to any property transferred by grant or gift, whether made in contemplation of death or otherwise, or devised or bequeathed by any person for religious, charitable or educational purposes to be carried out in the Province, or on the amount of any unpaid subscription for any like purpose made by any person so dying for which the estate of the deceased is liable; nor

(i) that portion of any property transferred by grant or gift, whether made in contemplation of death or otherwise, or devised or bequeathed by any person for religious, charitable or educational purposes to any religious, charitable

or educational organization that carries on its work both in and outside of the province the value of which bears the same ratio to the net value of all the property passing on the death of the deceased that its expenditures for carrying on the work of the organization in the Province bear to the total expenditures of the organization during such period as the minister may determine; nor

(j) to property given, devised or bequeathed for religious, charitable or educational purposes to be carried out in any Province of Canada other than British Columbia that is shown to the satisfaction of the Minister to allow the same exemption on property given, devised or bequeathed for religious, charitable or educational purposes to be carried out in British Columbia; nor

(k) to property given, devised or bequeathed for religious, charitable or educational purposes to a religious, charit-

able or educational organization approved by regulations made under this Act;

(2) For the purposes of subsection (1) the Minister, in his absolute discretion, may determine whether any purpose or organization is a religious, charitable or educational purpose or organization.

5. New York.

Estate Tax Act, McKinney's Consolidated Laws of New York Annotated, 1960, Book 59, Part 2, and Supplement of 1963, S. 249(s).

For the purpose of the tax the value of the net estate shall be determined by deducting from the value of the gross estate:

2. The amount of all bequests, legacies, devises or transfers (including the interest which falls into any such bequest, legacy, devise or transfer, as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer or power of the disclaimer, is made within eighteen months after the decedent's death), . . .

(b) to any officer of a religious denomination subject to the same conditions and exceptions applicable to a religious corporation or

(c) to or for the use of any corporation, wheresoever incorporated or located, organized and operated exclusively for religious, charitable, scientific, literary, patriotic . . . purposes . . . no part of the net earnings of which inures to the benefit of any private stockholder or individual . . . or

(d) to a trustee or trustees or a fraternal society, order, or association . . . but only if such contributions are to be used by such trustee . . . exclusively for religious, charitable, scientific . . . purposes . . .

6. Michigan.

Inheritance Tax Act, Public Acts 1962, No. 168, Secs. 1 and 7.

1. That after the passage of this Act a tax shall be and is hereby imposed upon the transfer of any property, real or personal . . . or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, not exempt by law in this state from taxation on real or personal property, or not heretofore existing within

this state as established non-profit, unincorporated foundations operated exclusively for benevolent, charitable or educational purposes in the following cases:

7. Provided further that every transfer to any corporation, society, institution or person or persons or association of persons for benevolent, charitable, religious or educational purposes, organized, existing or operating under the laws of or within a state or territory of the United States (other than Michigan) or of the District of Columbia, also shall be exempt from taxation under the provisions of this act, if at the date of the transfer . . . (the date of the decedent's death) . . . the laws of the state or territory or of said district under which such corporation . . . was organized, existing or operating did not impose a death tax of any character in respect to property transferred to such a corporation . . . organized, existing or operating under the laws of or

> or within this state, or if at the date of the transfer the laws of the state . . . contained a reciprocal provision under which such a transfer to such a corporation . . . organized, existing or operating under the laws of or within another state . . . were exempted from death taxes of every character, providing said other state . . . allowed a similar exemption to such a corporation . . . organized, existing or operating under the laws of another state. . . .